UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

APR 08 2005

LAWRENCE K. BAERMAN, CLERK
ALBANY

THE KING SERVICE, INC.,

Plaintiff,

-against-

THE CITY OF TROY, NEW YORK,

Defendant.

ANSWER
Civil Case No. 1:05-CV-359
(GLS/DRH)

The defendant, The City of Troy, New York, for its Answer to the Complaint of the plaintiff:

1. Denies knowledge or information to form a belief as to the allegation set forth in paragraph marked and numbered "1" of the Complaint.

2. Admits the allegation set forth in paragraph marked and numbered 2 of the Complaint.

3. Leaves all questions of law and jurisdiction to this Court and denies that it has violated 42 U.S.C. §1983.

4. Admits so much of paragraph marked and numbered "4" of the Complaint that the parties hereto entered into an Agreement of Lease and denies the remaining allegations.

5. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked and numbered "5" of the Complaint.

6. Admits the allegations set forth in paragraph marked and numbered "6" of the Complaint.

7. Denies the allegations set forth in paragraph marked and numbered "7" of the Complaint.

8. Admits the allegations set forth in paragraph marked and numbered "8" of the Complaint.

9. Admits so much of paragraph marked and numbered "9" of the Complaint which alleges that the parties would cooperate with each other to implement the Like Kind Exchange and upon consummation of the Like Kind Exchange, the lease would be terminated and expire as if such date were the end term of the lease, denies each and every remaining allegation and refers all questions of law, duties and obligations set forth in the Lease Agreement to this Court.

10. Admits the allegations set forth in paragraph marked and numbered "10" of the Complaint, however refers all questions of law, duties and obligations set forth in said approval to this Court.

11. Admits so much of paragraph marked and numbered "11" of the Complaint that alleges the City utilized the property for storage of yard waste and denies each and every remaining allegation.

12. Admits the allegation set forth in paragraph marked and numbered "12" of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph marked and numbered "13" of the Complaint.

14. Admits the allegations set forth in paragraph marked and numbered "14" of the Complaint.

15. Admits the allegations set forth in paragraph marked and numbered "15" of the Complaint.

16. Admits the allegations set forth in paragraph marked and numbered "16" of the Complaint.

17. Admits the allegations set forth in paragraph marked and numbered "17" of the Complaint.

18. Admits the allegations set forth in paragraph marked and numbered "18" of the Complaint.

19. Denies so much of paragraph marked and numbered "19" of the Complaint which alleges that the quarterly payment of $5,382.64 was listed for the Alamo and admits the remaining allegations.

20. Denies so much of paragraph marked and numbered "20" of the Complaint that it alleges payments of $77,000.00 were made and admits the remaining allegations.

21. Admits the allegations set forth in paragraph marked and numbered "21" of the Complaint.

22. Admits the allegations set forth in paragraph marked and numbered "22" of the Complaint.

23. Admits the allegations set forth in paragraph marked and numbered "23" of the Complaint.

24. Denies so much of paragraph marked and numbered "24" of the Complaint that alleges the payments made by plaintiff on February 2, 1999 were not

credited and/or allocated to the seven parcels, in that they were credited and/or allocated at a later date, and admits the remaining allegations.

25. Denies so much of paragraph marked and numbered "25" of the Complaint that makes reference to 9 North Drive, Troy, New York, and admits the remaining allegations and further admits that plaintiff contacted the City of Troy relative to 9 Northern Drive, Troy, New York.

26. Admits so much of the paragraph marked and numbered "26" of the Complaint that the Installment Agreement provided that quarterly payments of $3,514.87 be made for the Mill Street property, admits that it was given credit for two payments, and that third payment was not initially credited and denies each and every remaining allegation.

27. Denies each and every allegation set forth in paragraph marked and numbered "27" of the Complaint.

28. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "28" of the Complaint.

29. Admits so much of paragraph marked and numbered "29" of the Complaint which states that plaintiff paid $24,016.44 and denies each and every remaining allegation.

30. Admits so much of paragraph marked and numbered "30" of the Complaint that alleges that a building owned by plaintiff in the City of Troy was destroyed by fire and denies each and every remaining allegation.

31. Admits the allegation set forth in paragraph marked and numbered "31" of the Complaint.

32. Admits the allegation set forth in paragraph marked and numbered "32" of the Complaint.

33. Admits the allegation set forth in paragraph marked and numbered "33" of the Complaint.

34. Admits the allegation set forth in paragraph marked and numbered "34" of the Complaint.

35. Admits the allegation set forth in paragraph marked and numbered "35" of the Complaint.

36. Denies each and every allegation set forth in paragraph marked and numbered "36" of the Complaint.

37. Denies each and every allegation set forth in paragraph marked and numbered "37" of the Complaint.

38. Admits the allegations set forth in paragraph marked and numbered "38" of the Complaint.

39. Denies each and every allegation set forth in paragraph marked and numbered "39" of the Complaint.

40. Denies each and every allegation set forth in paragraph marked and numbered "40" of the Complaint.

41. Admits the allegation set forth in paragraph marked and numbered "41" of the Complaint.

42. Denies each and every allegation set forth in paragraph marked and numbered "42" of the Complaint.

43. Repeats, realleges and reiterates each and every response to paragraphs marked and numbered "1" through "42" as if each were set forth in full herein.

44. Denies each and every allegation set forth in paragraph marked and numbered "44" of the Complaint.

45. Repeats, realleges and reiterates each and every response to paragraphs marked and numbered "1" through "44" as if each were set forth in full herein.

46. Denies each and every allegation set forth in paragraph marked and numbered "46" of the Complaint.

47. Repeats, realleges and reiterates each and every response to paragraphs marked and numbered "1" through "46" as if each were set forth in full herein.

48. Denies knowledge or information to form a belief as to the allegations set forth in paragraph marked and numbered "48" of the Complaint.

49. Denies each and every allegation set forth in paragraph marked and numbered "49" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

50. Plaintiff defaulted on the Installment Agreement payments in that on two occasions, October 30, 1998, and February 2, 1998, the payments were late, thus incurring late charges together with interest. Defendant also failed to make the five installment payments due between March 31, 1999, and March 31, 2000, together with late charges and interest.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

51. Plaintiff failed to pay property and school taxes on any of the seven properties identified in the Installment Agreement for the year 1999 and 2000, nor did it pay late charges or interest.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

52. This court lacks jurisdiction over the subject matter of plaintiff's causes of action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

53. Plaintiff's causes of action are barred by the applicable statute of limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

54. Whatever damages and/or losses that plaintiff sustained were caused in whole by its own negligence and lack of care and failures and without any negligence or carelessness on the part of this defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

55. Plaintiff failed to comply with the provision of the Agreement of Lease nor did it implement the terms of the Agreement of Lease.

56. Plaintiff never occupied the Demised Premises.

57. Plaintiff paid no taxes on improvements as required by the Agreement of Lease.

58. Plaintiff failed to obtain an insurance policy insuring against loss by fire and naming the defendant as an additional insured.

59. Plaintiff failed to obtain a general liability policy on the Demised Property as required by the Agreement of Lease.

60. Plaintiff has failed to pay defendant the agreed-upon rent.

61. Plaintiff failed to comply with the terms of the Agreement of Lease in that it failed to post a bond in the amount of $62,500.00 naming the defendant as beneficiary, as was required by paragraph 17(b) of the Agreement of Lease.

62. Plaintiff, by its failure to comply with the provision of the lease and failure to implement the terms of the lease, abandoned and/or terminated said lease. Accordingly, the Like Kind Exchange proposed in the Agreement of Lease terminated.

AS AND FOR A FIRST COUNTERCLAIM

63. That prior to November 22, 1999, plaintiff was the owner of real property located on Main Street, Troy, New York, and further identified as Tax Map No. 111.59-2-3 and known as the Alamo.

64. That during its ownership, plaintiff stored and maintained fuel oil and other petroleum products on said property.

65. Plaintiff's storage and maintenance was sloppy, negligent and careless and resulted in contamination of soils and groundwater.

66. Defendant makes claim against the plaintiff for the cost of investigation and remediation of said property.

AS AND FOR A SECOND COUNTERCLAIM

67. Defendant requests that this Court, in its discretion, allow it as a prevailing party a reasonable attorney's fee.

WHEREFORE, Defendant demands judgment dismissing the Complaint, with costs and expenses, including reasonable attorneys' fees and further demands judgment for the costs of investigation and remediation of the property identified as Tax I.D. No. 111.59-2-3, together with such other and further relief as this Court deems just and proper.

Dated: April 7, 2005

Respectfully submitted,

Charles A. Sarris

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and Attorney for the City of Troy
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